

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA (ERIE)

CIVIL DOCKET FOR CASE#:

TINA LINDQUIST, : FILED 8/31/2004
Plaintiff

V.

HEIM, L.P.,
Defendant

FILED 8/31/2004

10 Conference hearing held in the above-captioned
11 matter on Monday, June 27, 2005, commencing at 1:30
12 p.m., before the Honorable Susan Paradise Baxter,
13 United States Courthouse, 17 South Park Row, Room A280,
14 Erie, Pennsylvania.

16 | For the Plaintiff:

Dallas W. Hartman, Esquire
2625 Wilmington Road
New Castle, PA 16105

20 For the Defendant:

Paul R. Robinson, Esquire
Meyer, Darragh, Buckler, Bebenek & Eck
600 Grant Street
U.S. Steel Tower, Suite 4850
Pittsburgh, PA 15219

25 Reported by Janet A. York
Ferguson & Holdnack Reporting, Inc.

1 JUDGE BAXTER: Good afternoon. This is Tina
2 Lindquist versus Heim, L.P., Civil Action No. Erie 04249.
3 We are here on a motion to compel by the Plaintiff.

4 I've read the papers on both, and perhaps let
5 me start with some questions, unless you all want to give me
6 an overview that I may not know.

7 MR. HARTMAN: Judge, this is Dallas Hartman, I
8 represent Tina Lindquist. I know that there are a lot of
9 documents for you to read, a lot of paper here. I think
10 what it boils down to from the Plaintiff's perspective is
11 quite simply, it's our burden to establish an alternative
12 feasible design. We're entitled to Discovery on different
13 types of designs and different types of safety devices used
14 for point-of-operation protection. So, if you take all
15 those Interrogatories and all those Requests for Production
16 of Documents, if you take all the questions, what we are
17 seeking from the Defendant in this case is merely we want to
18 know the types of point-of-operation protection devices that
19 they've utilized on press brakes from 1960 to the present.
20 Then, it is our hope that we will be able to establish or
21 investigate and evaluate through engineering principles and
22 Notice of Deposition of the Corporate Designee as to whether
23 or not these designs could have been incorporated on this
24 particular machine at the particular time, whether it was
25 technically feasible, and what they have provided

1 safety-wise to Ms. Lindquist in this case.

2 The other subject area that we are seeking
3 Discovery information is other lawsuits or other accidents
4 to operators of the press brakes at the point of operation
5 where someone has been caught at the tinch point, because we
6 would be entitled to find out, you know, what they've said
7 in the past about point-of-operation protection. We would
8 be entitled to know what the depositions are and what they
9 have been telling other people in other cases. In addition,
10 we would be able to gain --

11 JUDGE BAXTER: In that you have a right to the
12 terms of the negligence count.

13 MR. HARTMAN: Well, the negligence count, most
14 certainly, but in the product liability count as well,
15 because, for example, let's say that there was an allegation
16 someone was hurt because of negligent design, or there is a
17 feasible safety -- alternative feasible design that could
18 have been implied, they might have elicited that information
19 from the corporate designee of Heim that indicates that,
20 yes, you could safely -- this machine could have been made
21 to provide protection to Tina Lindquist in this case.

22 Now, I realize Mr. Robinson is going to say
23 that the machine was safe and all that, but that's the
24 factual dispute that we have, and we have not gone far
25 enough into discovery merit that. But, we allege that the

1 product is unsafe in its design. It is mostly a design
2 defect or a negligence case. It's not a malfunction case
3 nor is it a warranty case. And when you have a design
4 defect, any evidence that would point to an alternative
5 feasible design whether or not they just learned about it
6 today, as long as it was -- it could have feasibly been
7 incorporated back in '78 when this machine was made, and the
8 technology was available back then. That is evidence that
9 relates to the primary issue in this case. Yeah, if you
10 just boil down all the questions -- and I've explained this
11 to Mr. Robinson -- we're looking at, we want to know the
12 types of safety devices that they have made available for
13 press brakes.

14 Press brake is a term which is known in the
15 industry through the ANSI standard. It's known to have,
16 because it is a press brake, it's a danger to the operator's
17 point of operation, and there are particular safety
18 mechanisms that ANSI recognizes that they could have used or
19 someone could have used, ANSI says its employer, and we are
20 seeking to find out what they've made available.

21 Now, Mr. Robinson has indicated to me that at
22 the time this machine was made, there were different types
23 of safety devices that they didn't manufacture, but they
24 knew about or made available as an option with this
25 equipment, and subsequent to the manufacturer of this

1 machine, they found the same type of thing. So, we just
2 want to know what types were made available for these types
3 of press brakes. And we want to know other lawsuits that's
4 been involved where someone has been injured at the point of
5 operation. And that's different from a pinch point, Your
6 Honor, because a pinch point is a danger not affiliated with
7 the point of operation as we've learned. And we are looking
8 at the danger to being conned in the machine at the
9 particular point of operation.

10 JUDGE BAXTER: So when they were concerned about
11 the definition of a similar product --

12 MR. HARTMAN: And, we've narrowed that down to
13 where we are looking for press brakes as governed by the
14 ANSI standards that they recognize was applicable to them.
15 Because press brakes come in all different sizes and shapes,
16 but protective mechanisms and what one safety device on a
17 different size press brake may be feasible to be put on this
18 as well. And we need to know what types of safety devices
19 they've used for point-of-operation protection on their
20 press brakes, not their punch presses, because Mr. Robinson
21 has told me those were not considered a punch press and not
22 a press brake as he has told me that that's something that
23 we are looking at this power press. We are looking at the
24 machines that they contend are governed by this ANSI
25 standard that Mr. Robinson says is applicable. We are going

1 to limit it to that.

2 JUDGE BAXTER: All right. So, we've narrowed it
3 down now to point of operation of press brakes.

4 MR. HARTMAN: Correct.

5 JUDGE BAXTER: Why are we going back to 1960?

6 MR. HARTMAN: Well, actually I'd like to -- I can
7 modify that now, because it is my understanding that the '72
8 ANSI standard applied. So, we would look at from '72 to the
9 present, Your Honor.

10 JUDGE BAXTER: Mr. Robinson, that's a little
11 different than the description I have from you in your
12 Response. So, why don't you respond to his comments.

13 MR. ROBINSON: Thank you, Your Honor. We have
14 come a long way from the initial Discovery requests that ask
15 for everything for every machine which would include all
16 50,000, and that is what our responses were based upon.
17 Since then, Mr. Hartman and I have talked about his present
18 demand being for all mechanical press brakes of any size,
19 shape or use from 19 -- now, it's 19 -- before it was 1960,
20 today is the first I've heard of 1972 -- I think it is
21 actually 1973 -- but regardless, from 1972 until 2005. So,
22 now we are over a 30-year time frame. He is certainly
23 entitled to records relating to the particular model precipitate
24 issue, and we've cited the law on that, and there has been
25 no legal citation at all from the Plaintiff. But he would

1 be entitled to design information for the Model 70-6, and
2 that's a very specific small press brake that those numbers
3 mean something.

4 It's a 70-ton press with a 6' table. It's a
5 maneuverable mobile press brake unlike a 100- or 200-ton
6 press brake that may be the size of a small building which
7 has completely different uses and completely different
8 applications. But, what he's asking for is all mechanical
9 press brakes. That is entirely too broad and not what is
10 required. He's limited to the identical model machine,
11 which we've offered to give him. And, again, we've cited
12 that law.

13 And then he has demanded -- or really she has
14 demanded -- the Plaintiff has demanded post-1978 information
15 up until 2005. And case law is very clear that a plaintiff
16 has no right to force a manufacturer to give up all
17 information and to search all of its records post
18 manufacturer and post delivery of the products, because a
19 defendant can only be liable if its product was defective or
20 if it was negligently designed. It still has to contain a
21 defect as of the time it left our control.

22 When the Plaintiff talks about its burden of
23 proof, that burden is always met in these product cases with
24 an expert saying here's what was available and here's what I
25 think could have been made a part of this machine. Now in

1 actuality occurs, we did not design, we did not manufacture
2 the point-of-operation safety devices to any extent. Those
3 are done by outside companies, but they were made available
4 on the specification sheets that we've provided and that we
5 have attached with our Response. And those devices that
6 were available back at the time of sale, back in 1978, that
7 were made available through us were positional guarding with
8 a foot switch and a two-palm button switch which the
9 employer ultimately purchased.

10 Now, the Plaintiffs, of course, since this
11 machine was sold to a completely different entity for
12 apparently a completely different use when it was first sold
13 by us. So the Plaintiffs' request for post-1978 information
14 has no relevance and cannot possibly lead to the discovery
15 of relevant evidence in accordance with the Case Law and our
16 rules, so I am asking Mr. Hartman and the Plaintiffs to
17 limit it to the Model 70-6 in pre-1978, and we will begin
18 that task which is somewhat of a task because of the age of
19 the records.

20 But I at least think there's a colorable
21 claim that they would be entitled to it even though this
22 machine was specifically designed and constructed for a
23 particular advercation, or to use the words of Pennsylvania
24 law, an intended use. At least, we think that we could give
25 him that information or her that information and at least is

1 a colorable claim to its relevance.

2 MR. HARTMAN: But post-1978, all models of press
3 brakes?

4 JUDGE BAXTER: Mr. Hartman, he's talking about one
5 case in Pennsylvania, the Eastern District, which cites a
6 circuit case from 1958 on identical models. And, he is
7 talking about an Eastern District of Wisconsin case from
8 1973 about post-dating the manufacturer of the product not
9 being relevant for Discovery purposes. Do you have a
10 response?

11 MR. HARTMAN: Well, Your Honor, the status of the
12 law is now that I am entitled to the discovery of any
13 evidence that is likely to lead to the discovery of relevant
14 evidence. In the case cited, it was a Judge Hewitt case in
15 the Eastern District, he allowed them to have discovery
16 conducted on different models of vehicles that had a similar
17 design issue. And he did not allow them to have discovery
18 on multiple vehicles where there were -- in that case, it
19 was an engine mount case. He says you can have the
20 discovery on cases where there -- on all of the vehicles
21 where there's a two-engine mount situation. But, we will
22 not give you the Discovery. I'm not allowing you to have
23 the recall notices on the -- excuse me, the recall was on
24 the two-engine mount cars. The car in question had more
25 than two-engine mounts. They said, we'll let you have all

1 the discovery on vehicles that have similar engine mount
2 situations, but we will not let you, since it's acknowledged
3 in this case that this car -- that the recall was on a
4 two-engine mount system, and this was not a two-engine mount
5 system, we will not allow you to have that. But earlier in
6 that very same case, as the Court indicates, they allowed
7 them to have discovery and provided discovery on all the
8 different types of vehicles that had similar propensities as
9 this vehicle. And the fact is that I have to show an
10 alternate vehicle design.

11 JUDGE BAXTER: Let me interrupt there for a
12 second. The point by Mr. Robinson is somewhat sound. I
13 mean it is the way of trial that that's your expert
14 testimony.

15 MR. HARTMAN: Well, Your Honor, but certainly that
16 one of the things that I'm able to determine from my expert
17 is whether or not the issue is going to be feasible. Let's
18 say my expert comes up with an alternate feasible design. I
19 can utilize all of my Discovery materials for him to
20 formulate that. I don't have to re-invent the wheel if
21 they've already made it available on other products.

22 Now, let's say that my expert, Your Honor,
23 would come in and say -- and I'm just going to use this
24 because Mr. Robinson is familiar with the term of a light
25 curtain -- and he says that light curtains were feasible in

1 1978 would have made this machine safe. And let's say that
2 in '84 that Heim made my curtains available for their
3 machines, but all the technology, that same type of light
4 curtain was available years before. It might have been
5 available in '75. And they come in and say, well, geez,
6 this light curtain doesn't work, it is not feasible.
7 Meanwhile, they could have been selling it themselves and
8 making it available for its customers at a later date.

9 The law is, Your Honor, that I have to show
10 the technology was feasible at that time, and the machine
11 lacked the technology. I don't have to show that they
12 offered it for sale or that they utilized it. And if they
13 are utilizing safety devices for the point of operation and
14 making it available at a later date, I can go get all those
15 devices, look at them, research them, find out if they were
16 available back in '78 with research and have my expert look
17 at it and see if the technology was available, and maybe
18 that is the alternative feasible design. Mr. Robinson is
19 trying to limit me to 1978 as what they knew. Well, you
20 know, maybe they did or they didn't, and I don't want to
21 presuppose that everything that his client says is true at
22 this point because I don't know. I haven't had the
23 opportunity to, you know, do discovery on that.

24 And ANSI recognizes particular types of
25 safety mechanisms for all press brakes regardless of size.

1 So, a present sensing device which is one of the types as a
2 light curtain has the same parameter as on a 100-ton machine
3 as it does on a 70-ton machine as it does on a machine as
4 big as a building, and ANSI sets up the parameter. So, the
5 light curtain on a 100-ton machine would have the same
6 parameters as far as safety under ANSI as it would under on
7 a 70-ton machine. So Mr. Robinson's client's attempt to
8 say, well geez, all these different sizes of machines, they
9 all apply to a 70-ton, well that's not so. ANSI states
10 that. ANSI has the parameters that these safety devices
11 have to meet regardless of the size of the machine, meaning,
12 if you are going to be within 4 feet of the machine, that 4
13 feet has to be protected. If you are going to be within 2
14 inches of the machine, it has to be protected. If you are
15 going to have -- you know, there are all different types of
16 parameters that ANSI sets. It doesn't say that on a 200-ton
17 machine you do this, and on a 100-ton machine you do that,
18 and on a 70-ton machine you do something different. And
19 I've asked, like I've said, tell me what types of devices
20 that you've made available for sale with all of the machines
21 and give me a prototypical model of that, the specifications
22 of a prototypical model that you made available, and then
23 I'll be your corporate designee and determine the rest of
24 the facts that I need.

25 Generally speaking, from my understanding,

1 Your Honor, there is maybe six to eight types of safety
2 devices for point-of-operation protection. If he gives me
3 one prototype that they've made available for each and tells
4 me when they made them available with the specs, then I'll
5 go from there. But I can't get that for him.

6 MR. ROBINSON: If I may respond, if all of that
7 information is available to every expert out there in power
8 press, press brakes, punch press cases, the argument that he
9 says the Plaintiff is making is the same as if we have a --
10 we'll just use the same years -- a 1978 Chevy Cadillac and
11 someone is ejected from the car. Now, he says, cars are the
12 same. They all have ejection methods. Give me every single
13 model of car that you have made from 1960 or 1972 through
14 2005 and tell me every single device you have, whether it be
15 seatbelts, whether it be air bags, whether it be side air
16 bags, front air bags, give me all that information, because
17 I want to claim that even though you came about with that
18 information or knew about that information in 2005, I
19 somehow want to give my expert that information and suggest
20 that it might be relevant in establishing that it was a
21 reasonable feasible alternative design in 1978. I have
22 never seen until several requests, respectfully, of that
23 breadth, and I have certainly never seen an order requiring
24 a defendant to go through that exercise.

25 JUDGE BAXTER: Let me interrupt a second. You say

1 that you have sold in excess of 50,000 products, that those
2 go under a heading of press brakes, power press, and every
3 other machine. How many press brakes as defined by ANSI in
4 that period have you sold, approximately?

5 MR. ROBINSON: I do not know the answer, Your
6 Honor, because it would take us a manual file-by-file
7 search, and we didn't want to do that now ahead of time
8 until we saw what the Court wanted to deem was relevant or
9 discoverable. So, we literally may have to hire someone to
10 go through each of the paper files.

11 I've been out to the office to prepare for my
12 conference with Mr. Hartman to try to make sure I could be
13 as accurate as I could. I wanted to see the actual
14 record-keeping process. And it is file cabinet after file
15 cabinet of over 50,000 files -- and that's probably too many
16 cases -- maybe 40,000 files of manual materials, and we did
17 not go through and make that count. I cannot answer that
18 question, Your Honor.

19 MR. HARTMAN: Your Honor, I just want the
20 prototypical types of point-of-operation protection, one
21 sample of each type they've made available. So, if they
22 have present sensing devices, and one is a light curtain,
23 and one is a radio frequency, I just want to know one type
24 of light curtain that they've utilized and one type of radio
25 frequency, the earliest ones they utilized. And if one is a

1 two-ton press, I want to know one prototype of that and the
2 specs on that. If one is a two-hand pullout device, I want
3 the specs of that and the prototype of that, because then I
4 can go to the corporate designee and, you know, talk to him
5 about those types of things.

6 MR. ROBINSON: We don't design those. The answers
7 to that question, Mr. Hartman, would be we don't design any
8 of them ourselves.

9 MR. HARTMAN: But, I'm asking for the types that
10 you've made available for sale with your machines, because
11 you do make -- your records do indicate that you allow
12 customers to pick different types. And we don't know what
13 types you allow them to pick, how the sales process is, and
14 --

15 MR. ROBINSON: Mr. Hartman, that is not accurate.
16 We've given you the actual sales documents for this
17 particular machine that very clearly showed that we have
18 offered a two-pull button switch and the clip switch for
19 sale back in 1978. And, again, we have offered to give you,
20 pre this sale of this product, that information. So that is
21 not accurate that we haven't told you what was available by
22 us at this time.

23 MR. HARTMAN: Well, with regard to this machine,
24 you have said that. I'm explaining it with regard to other
25 press brakes. Your client might have made present sensing

1 devices available in '78.

2 MR. ROBINSON: That poses two questions then. Did
3 you get post-1978?

4 MR. HARTMAN: Yes.

5 MR. ROBINSON: And we do not believe that you had
6 any right to that information forcing us to go through that,
7 and then what you're saying now is you get pre-'78 but all
8 press brakes. That's, at least, somewhat narrowing it.

9 MR. HARTMAN: Your Honor, I am entitled to post
10 '78 because of the feasibility issue.

11 MR. ROBINSON: Mr. Hartman, I haven't cited any
12 law that would suggest that you are entitled to that. The
13 law that I found says that there is no way in the world the
14 Plaintiff could expect that information.

15 MR. HARTMAN: Your Honor, the law he cites is on a
16 different factual basis. If a close analysis of the Court's
17 decision indicates that's it's a different factual scenario,
18 the issue here is feasibility, you know. It would be for me
19 to sit there and say -- you know, use Mr. Robinson's example
20 of a car where there is an ejection. I would have a right
21 to know -- let's say the car didn't have seatbelts, and
22 seatbelts were incorporated in the next model year or three
23 model-years later. I would have a right to know were
24 seatbelts available at another time, what is the design of
25 the seatbelt. I could look at the car in question, know

1 whether or not that seatbelt could have been incorporated
2 safely in that vehicle for an alternative feasible design.
3 Whether, ultimately, it will be the alternative feasible
4 design is an issue for the jury. Mr. Robinson is asking you
5 for he would like it to be -- limit what evidence I can
6 produce on the alternative feasible design or how I get my
7 evidence.

8 JUDGE BAXTER: Well, you know that you have to get
9 the evidence where you can. And if you are not able to and
10 your expert is able to find evidence on safety devices that
11 could have been employed on this power brake elsewhere, then
12 they don't have to dig through for you to give that evidence
13 to your experts.

14 I am more concerned right now, I'm thinking
15 through the power brake issue, and I don't see limiting it
16 to this one model number, Mr. Robinson. I don't understand
17 the rationale behind that. I don't believe the case you
18 cite says that. I believe that narrowing it down to power
19 brakes is about as narrow as we can go on that. So, let's
20 discuss that first because I am closer to making a decision
21 on that one.

22 Is there anything else you would like me to
23 -- I mean, the rule is that it's materials that will lead to
24 admissible evidence, and he has made a case for that on
25 power brake machines as defined by ANSI.

1 MR. HARTMAN: I think the terminology, Your Honor,
2 is what we are referring to is press brakes.

3 JUDGE BAXTER: I'm sorry, press brakes.

4 MR. HARTMAN: This is a power press, and there is
5 a press brake.

6 JUDGE BAXTER: I know, I'm sorry.

7 MR. ROBINSON: It is my understanding that if the
8 Plaintiff is going to come in and ask for other products
9 besides the identical product at issue or the identical
10 component at issue, then they need to meet some type of
11 burden in proving that it is the same issue. They haven't
12 done that. All they are saying is that they think it may
13 be.

14 JUDGE BAXTER: But ANSI makes it the same issue,
15 ANSI makes it the same issue.

16 MR. ROBINSON: The indication is that the
17 Plaintiff has not come forward with any indication or some
18 type of basis to show that there is a similarity sufficient
19 for purposes of their burden. They haven't given us
20 anything on that. They are just saying, well, just give it
21 to me so that we can explore that. To me, that is more of a
22 fishing expedition than coming into Court with some type of
23 affidavit which we often see in these cases by an expert
24 saying that someone needs -- which someone who will be
25 expert see that information on all press brakes so that they

1 can make a determination of whether or not this particular
2 small mobile product of press brake, the 70-6, is defective.

3 JUDGE BAXTER: But ANSI doesn't define this so
4 narrowly. ANSI gives standards for the entire generic term,
5 press brakes.

6 MR. ROBINSON: It does.

7 JUDGE BAXTER: And so I think ANSI is the decision
8 on that. I am having a harder time with the time period. I
9 think that --

10 MR. HARTMAN: Your Honor, if I may interrupt.

11 JUDGE BAXTER: Go ahead.

12 MR. HARTMAN: I believe that the ANSI standard was
13 changed some time in the '90s.

14 MR. ROBINSON: It's been changed four different
15 times.

16 MR. HARTMAN: I'm just saying, excuse me.

17 JUDGE BAXTER: Does it ever break down different
18 types of press brakes?

19 MR. HARTMAN: No. It breaks down different types
20 of safety, point-of-operation protection mechanisms. And,
21 Your Honor, if the Court would order the Defendant in this
22 case to turn over a representative sample made available for
23 sale by them in conjunction with their press brakes of one
24 of each type that's recognized by ANSI and let us know when
25 it was first incorporated, that would allow me to understand

1 more of what the defense is going to be from their
2 perspective.

3 JUDGE BAXTER: But, see, that doesn't solve the
4 problem. The problem for them is going through
5 tens-of-thousands of files manually. That doesn't solve the
6 problem.

7 MR. HARTMAN: Your Honor, I have a difficult time
8 thinking with regard -- and not being there, I certainly --
9 you know, I've been on a lot of cases where -- and I do a
10 lot of product liability work, Your Honor, and I've tried
11 cases in Federal Court in front of Judge Sindridge and Judge
12 Ambrose. So Mr. Robinson's experience in defending these
13 cases as he has represented to you is significantly
14 different than when I tried cases in Federal Court with the
15 defense attorneys and other judges.

16 MR. ROBINSON: I don't know what that means, Mr.
17 Hartman.

18 MR. HARTMAN: Well, it's things that are assumed
19 to be --

20 JUDGE BAXTER: You find it hard to believe that he
21 is representing correctly that there are tens-of-thousands
22 of files?

23 MR. HARTMAN: I think there are tens-of-thousands
24 of documents. I think there would probably be less than one
25 document that would be utilized with regard to the safety

1 mechanisms available for each generation of types of
2 machines. There are tens-of-thousands of documents in that
3 there will be drawings, there will be communications, there
4 will be correspondence and that. But, you know, in 1990, I
5 would assume -- or 1978, I would assume that there was a
6 list of recognized vendors that they utilized for
7 point-of-operation protection mechanisms. They sell their
8 product in conjunction with their machine. And that list
9 would probably be -- and I'm looking at this and, again,
10 without the benefit of deposing Mr. Robinson's client at
11 this point in time because I was trying to get the documents
12 first, I would sit there and say that to look at just the
13 documents provided to me that there would be a list of
14 preferred vendors that have point-of-operation protection
15 mechanisms, and that these are the ones we are going to
16 allow someone to check off on machines or make available.

17 JUDGE BAXTER: Well, that was not required their
18 going through and giving you every single safety -- going
19 through each sale folder. I think that's what his comment
20 was.

21 MR. HARTMAN: I don't want that. What I am
22 looking for is the list of representative safety mechanisms,
23 for example, two-hand pump switches.

24 JUDGE BAXTER: And if he doesn't have such a list,
25 how is he going to compile that information?

1 MR. HARTMAN: Well, no one has told me that they
2 don't, Your Honor. If there isn't, maybe not. I'd like to
3 know, for example, when present sensing devices were first
4 made available by them and a copy of the vendors that they
5 allowed.

6 MR. ROBINSON: Well, that would require us to go
7 through those files through '78. If the Plaintiffs would
8 have asked for even mechanical press brakes for up until '78
9 or even if the example that was given to us just a moment
10 ago by Mr. Hartman was within a year after the next model
11 year or the second-year model, at least we probably would
12 not be here, because we probably would have gone through the
13 exercise just to avoid a motion and taking up the Court's
14 time. But they want it through 2005.

15 MR. HARTMAN: Your Honor, we'll limit it to 1995.

16 JUDGE BAXTER: No, no.

17 MR. ROBINSON: Well, the law is that it is limited
18 to '78.

19 MR. HARTMAN: No, I don't believe that that's the
20 law.

21 MR. ROBINSON: I would agree to produce through
22 1980 if we limit it to press brakes just so we could remove
23 that argument that if it was provided into one year
24 following or the second year following. But I think you
25 haven't shown any type of foundation -- the Plaintiff hasn't

1 shown any type of foundation post '78. But if there were a
2 compromise, I would offer to go through that exercise
3 through 1980 to give you that, but.

4 MR. HARTMAN: Your Honor, ultimately, in
5 Discovery, we are going to want to know -- and one of the
6 questions that will be coming as we provided Mr. Robinson
7 with a Notice of corporate designee Deposition -- one of the
8 things that we are going to want to know is when were
9 present sensing devices first made available.

10 JUDGE BAXTER: Well, you know what, you know what,
11 you can do your own research to find out when those things
12 are available, and when he tells you --

13 MR. HARTMAN: I know when --

14 JUDGE BAXTER: Well, let me finish. When he tells
15 you what they offered up to 1980, then you make your case.
16 But to me, this goes to when they knew it in a negligent
17 sense. And we all know it is not going to go to a
18 negligence claim to trial.

19 MR. HARTMAN: That's correct, in all due candor of
20 the Court, in all likelihood.

21 JUDGE BAXTER: Exactly.

22 MR. HARTMAN: But that's even more so in the
23 feasibility issue. Because the feasibility issue is
24 everything in this case.

25 JUDGE BAXTER: I know that the feasibility issue

1 is your expert. And if your expert gets on the stand and
2 says this technology was available, they didn't offer it,
3 then you can make that claim. But if you say they offered
4 it in 1995, that doesn't help your expert at all. The
5 expert is going to know these things.

6 MR. HARTMAN: You're correct, Your Honor. My
7 expert would not come in and say that the product was
8 defective because it was offered in 1995 and they didn't
9 incorporate it. But what my expert -- there are several
10 things. What my expert could do is utilize the vendors that
11 they've used in determining what was technologically
12 feasible in 1978, whether his design and their design, and
13 it was available in '78.

14 JUDGE BAXTER: Well, he can do that by the vendors
15 that they use in that time period. I am ready to rule.

16 What we are going to do is we are going to
17 limit the time period to 1980 on the outside end, and we are
18 going to allow that information from all press brakes sold
19 during that time period by the Defendant.

20 MR. ROBINSON: We are starting in 1972, Your
21 Honor?

22 JUDGE BAXTER: Yes, 1972 I believe is what we
23 agreed on.

24 MR. ROBINSON: All right.

25 JUDGE BAXTER: Is there any other issue then on

1 these things?

2 MR. HARTMAN: Prior accidents, accidents involving
3 -- yeah, I'd like to know of other claims and other
4 litigation that's been involved with press brakes and
5 point-of-operation protection.

6 MR. ROBINSON: I think it is the same time frame
7 for both issues, from '72 to '80. Just so I know, what
8 information is it that I am supposed to be giving him?

9 MR. HARTMAN: Right now, I just asked for the --

10 JUDGE BAXTER: Yes, let's give that -- you mean
11 about the press brakes? He wants the identity of the
12 manufacturer, the type of safety device offered, and a
13 prototype.

14 MR. HARTMAN: Correct.

15 JUDGE BAXTER: Specs.

16 MR. HARTMAN: Yeah.

17 MR. ROBINSON: What do we mean, prototypes?

18 JUDGE BAXTER: If you have a picture of the
19 prototype, will you have specs on it.

20 MR. ROBINSON: Okay. I see what you are saying.

21 MR. HARTMAN: But not from the first issue.

22 JUDGE BAXTER: That's what I just ruled on. Now,
23 we will jump ahead, but I want to make sure that Mr.
24 Robinson understands that before we go on.

25 MR. ROBINSON: Your Honor, I think the arguments

1 in the law are the same, post sale accidents particularly
2 through 2005. But it's the same issue. They have no
3 relevance to knowledge when, again, to the negligence case
4 for defect if we want to get into the product liability case
5 when the product leaves my control in 1978. There is no
6 duty to retrofit or recall these particular machines. That
7 can't be the argument. So, if we only look to the date of
8 distribution, 1978, how can post '78 accidents have any
9 relevance or lead to any relevant information? And the law
10 that we cited there says it doesn't discover it either. It
11 is too much of a burden.

12 MR. HARTMAN: Your Honor, I don't know how much of
13 a burden it is. There has been no representation to me
14 which I believe is his obligation to provide as far as how
15 burdensome it will actually be. But I'm looking in those
16 cases to find out with regard to the tests made and the
17 Corporate officials with regard to this issue. I mean if he
18 just wants to just provide me transcripts of testimony on
19 the post-AD cases, I'd be willing to accept that, if he
20 provides me transcripts of their corporate designee testing
21 in all the cases that have been involved or your expert
22 testimony.

23 MR. ROBINSON: You want testimony on cases of a
24 press brake that was sold since 1990. If you want all that
25 testimony on a completely different press brake with

1 completely different ANSI standards governing it, with
2 completely different laws applicable, for what reason?

3 MR. HARTMAN: Well, completely different answers

4 --

5 MR. ROBINSON: You know that answer has been
6 changed. I think it was started in '73, into the 80s', and
7 then actually it has been changed multiple times, I think
8 four times.

9 MR. HARTMAN: May I please finish my statement,
10 Your Honor.

11 JUDGE BAXTER: Go ahead. Why do you need all of
12 this?

13 MR. HARTMAN: Your Honor, I am entitled to both
14 substance of evidence -- discovery of substance of evidence
15 as well as evidence as well as evidence that would likely
16 impeach their experts or their corporate designee. In those
17 cases, there very well could be -- and it would take a lot
18 of reading on our part to go through these transcripts --
19 that I expect that they'll be talking about feasibility of
20 different types of safety devices. That's what we are
21 seeking to find in this case. The whole issue is
22 feasibility.

23 JUDGE BAXTER: The testimony you can find yourself
24 elsewhere; is that not correct?

25 MR. HARTMAN: Your Honor, there are certain

1 resources that are available, but I don't know -- you know,
2 I have no way of knowing how complete it is compared to what
3 has actually occurred. As you are aware that any type of
4 outlet exchange or anything like that, it is only based on a
5 voluntary basis.

6 JUDGE BAXTER: I know. But the point though is
7 they don't have to do your research for you to cross-examine
8 their people.

9 MR. HARTMAN: I'm not asking them to do my
10 research, but they do have to provide me documents on a case
11 that is as catastrophic as this case.

12 MR. ROBINSON: Not post '78. The catastrophic
13 nature of the injuries, Mr. Hartman, doesn't give you any
14 entitlement to additional discovery. That is not relevant.

15 JUDGE BAXTER: Now, we could limit his time period
16 here on these -- I mean, he is correct. You can't get it up
17 until 2005. That will lead to admissible evidence.

18 MR. HARTMAN: Your Honor, how about from 1990?

19 MR. ROBINSON: How about -- wouldn't it make the
20 most sense to offer it according to the same time frame?

21 JUDGE BAXTER: Well, are we talking about the case
22 being up until 1990?

23 MR. ROBINSON: No, the sale of the product.

24 JUDGE BAXTER: The sale of the product?

25 MR. ROBINSON: The sale of the product. Yes,

1 because 1990 -- it could be referencing to 1989, '88, '87
2 press brakes that is governed by completely different
3 standards.

4 MR. HARTMAN: Your Honor, in all due candor with
5 regard to these particular issues, there is no significant
6 change in the standards. I don't want to get into
7 representation and colorable claims and, you know,
8 misstating things, but the fact of the matter is is that
9 with regard to safety mechanisms that are utilized and
10 recognized by ANSI, and the burden imposed by ANSI though,
11 that they are contending -- and I'm using their contention
12 that discovers everything. For the purpose of Discovery, I
13 am agreeing with them for the purpose of this and ANSI
14 govern cite, and only for the purpose of Discovery. There
15 is not a significant change with regard to the types of
16 safety mechanisms that were recognized.

17 MR. ROBINSON: How can there be any relevance to a
18 lawsuit filed in 1985 for a product that postdates the sale
19 of this product? How can there be any relevance that lead
20 to any relevancy? The only thing you've mentioned is to
21 attack the credibility of a witness you haven't even
22 deposed, so you can't even come into the Court to suggest
23 that there's a credibility issue.

24 MR. HARTMAN: Well, credibility is always an
25 issue.

1 MR. ROBINSON: But you would be entitled to the
2 discovery of every single product and every single lawsuit
3 through 2005, and that's not the law.

4 MR. HARTMAN: Your Honor, that's not -- again,
5 it's a serious mistake of what my contention is. My
6 contention is that as it relates to press brakes and as it
7 relates to point-of-operation protection, credibility and
8 feasibility are legitimate issues that the Corporate
9 Defendant is going to be contesting, and I'm going to be
10 contesting. And any evidence that they have in their
11 possession that could lead to the discovery of admissible
12 evidence is fair game for Discovery.

13 MR. ROBINSON: We are not talking about
14 feasibility now because you are asking for accident data.

15 MR. HARTMAN: I'm trying to ask for a list of the
16 manufacturers.

17 MR. ROBINSON: Your Honor, it goes with
18 feasibility as well, whether or not a lawsuit was filed goes
19 to feasibility.

20 MR. HARTMAN: What might be in the testimony as
21 far as the testimony of your corporate designee or your
22 experts as to feasibility of safety devices.

23 JUDGE BAXTER: Well, that's his doing your work
24 for you. I think I am going to make a preliminary ruling to
25 1980, and let's see what kind of -- if you feel that there

1 is something out there that you need desperately, then I'll
2 talk to you about it again. It won't be a final ruling.

3 MR. HARTMAN: Your Honor, one more matter I'd like
4 to approach with the Court. Since I am going to Chicago, I
5 believe, at the end of July, and Mr. Robinson has indicated
6 that he is going to hopefully produce a corporate designee
7 pursuant to my Court Notice of corporate designee
8 Deposition, the burdensome argument is not quite the same
9 when you are producing an individual or individuals to
10 testify. I would like to be able to depose their corporate
11 designees relating to, you know, alternative safety devices.
12 And that's clear that I am entitled to ask their corporate
13 designee about alternative feasible designs of safety
14 devices without a limitation of time.

15 MR. ROBINSON: What do you mean that's clear? You
16 haven't cited a case, and the Court has just made a ruling
17 on whether it is not it is reasonable.

18 MR. HARTMAN: Now, the court made a ruling, Paul,
19 that limited my time based on your representation that there
20 is going to be tens-and-tens-of-thousands of documents.

21 MR. ROBINSON: That's based on a document request.

22 JUDGE BAXTER: That's correct. My ruling was
23 based on a document request. Now, what is it that you are
24 asking?

25 MR. HARTMAN: Your Honor, I want to be able to

1 inquire from the corporate designee if you go beyond 1980.
2 For example, I am going to want to know when present sensing
3 devices were first utilized, what types of present sensing
4 devices that Heim is aware of that, you know, who were the
5 vendors. I'm going to be asking --

6 JUDGE BAXTER: You want me to make a ruling on
7 that beforehand?

8 MR. HARTMAN: Your Honor, I am going to be in
9 Chicago. This ruling, am I correct, doesn't limit me at
10 this point in time with regard to that. That will be
11 something that will be considered later.

12 JUDGE BAXTER: That's my understanding.

13 MR. HARTMAN: Okay.

14 JUDGE BAXTER: I ruled on the basis of burdensome.

15 MR. ROBINSON: Your Honor, did you not indicate
16 that we would also be, by his request, doing his research
17 for him. It's the same basis for him asking.

18 JUDGE BAXTER: On this last one, yes.

19 MR. HARTMAN: I'm entitled to --

20 MR. ROBINSON: Just a second. He wants me to
21 bring in Corporate representatives that would have knowledge
22 from 1972 --

23 JUDGE BAXTER: No, no. That's not the issue. You
24 bring in the people he wants to depose at his expense, and
25 he will ask them questions. If it is beyond their time

1 period, then there is nothing we can do.

2 MR. ROBINSON: Yeah, but when he sent in his
3 Corporate rep notices, he's identified those same time
4 frames, so that this is exactly what he is asking me to do
5 and produce those people from '72 to 2005. He is getting
6 the same point that we talked about with the
7 Interrogatories.

8 MR. HARTMAN: I'm trying to find what the
9 Corporate knowledge is.

10 JUDGE BAXTER: He has a right to that. He has a
11 right to that under the negligence count. It's still in
12 there.

13 MR. ROBINSON: For 2005?

14 JUDGE BAXTER: He has a right to find out when
15 they know what they know. We don't limit depositions, Mr.
16 Robinson. Mr. Robinson, we don't limit depositions on that
17 sort of thing. They can ask those questions.

18 MR. HARTMAN: Thank you, Your Honor.

19 MR. ROBINSON: Your Honor, are you ordering that I
20 have to produce --

21 JUDGE BAXTER: I am making no orders. In fact, if
22 you tell your client not to answer, then you guys call me,
23 and I'll make a ruling.

24 MR. ROBINSON: Okay.

25 MR. HARTMAN: Thank you, Your Honor.

1 JUDGE BAXTER: Thank you. Dismissed.
2
3 (Hearing adjourned at 2:12 P.M.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25